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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,004

10/16/2003

John Jerald Urlaub

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

MAIL DATE

DELIVERY MODE

02/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/687,004	Applicant(s) URLAUB ET AL.	
	Examiner Walter B. Aughenbaugh	Art Unit 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

  
 JENNIFER MCNEIL  
 SUPERVISORY PATENT EXAMINER

1/26/07

### ADVISORY ACTION

1. Applicant's Request for Reconsideration filed January 12, 2007 has been fully considered but is not persuasive.

#### *Response to Arguments*

2. Applicant's arguments presented on pages 4-5 of the Request for Reconsideration regarding the 35 U.S.C. 102 rejection have been fully considered but are not persuasive.

Applicant argues that Handjani et al. do not disclose that the nanoparticles of Handjani et al. are modified with a metal, but the nanoparticles of Handjani et al. are metal modified since the alginate is metal modified (col. 1, lines 60-65 and col. 2, lines 33-55 and 62-65) and since the nanoparticles are a component of the blend of nanoparticles and alginate of Handjani et al. (col. 2, lines 33-45), the nanoparticles therefore contact the blend of nanoparticles and metal modified alginate, thereby rendering the nanoparticles metal modified by virtue of the contact of the nanoparticles with the metal modified alginate. Applicant appears to argue that a method step is not taught by Handjani et al. ("Handjani, et al. completely fails to disclose or suggest, however, the modification... of *nanoparticles*..."), but whether or not Handjani et al. teach a particular method step is irrelevant to the prosecution of Applicant's article claims. The composition recited by claim 34 falls within the scope of the teachings of Handjani et al. for the reasons discussed above in this Advisory Action and for the reasons previously made of record.

Paragraph 4 of previous Office Action mailed November 15, 2006.

Applicant argues that "Handjani, et al. completely fails to disclose a *packaging material* that encloses a *paper product*", but each of a packaging material and a paper product fall within the scope of the teachings of Handjani et al. for the reasons previously made of record. Paragraph

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4 of previous Office Action mailed November 15, 2006. Applicant has not addressed the statements explicitly made in paragraph 4 of previous Office Action mailed November 15, 2006 that specifically state which component of Handjani et al. corresponds to each of the claimed packaging material and paper product and has not addressed the rationale provided in paragraph 4 of previous Office Action mailed November 15, 2006 that supports these statements.

Applicant's statement "one of ordinary skill in the art would readily recognize that an 'alginate capsule' for use in cosmetic products is not a 'paper product'" is not supported, and does not address the substance of the rejection of record.

Applicant's arguments regarding the rejection of claims 46-49 do not address the basis for rejection of record for these claims. Paragraph 4 of previous Office Action mailed November 15, 2006. The recitation of claim 46 that "the paper product is a tissue product" falls within the teachings of Handjani et al. for the same reason that the alginate capsules are a paper product as explicitly explained in the rejection of record regarding claim 34: the recitation "tissue product" of claim 46 does not limit the composition or structure of the claimed "tissue product" any further than "paper product" because a piece of paper coated with a composition containing alginate (as evidenced to be well known by Haberer et al.) can be used as a tissue, so the alginate capsules of Handjani et al. are a "tissue product". Furthermore, the recitation "where paper product is a paper towel" is not related to "the paper product" (claim 34) of claim 34: the language of claim 47 does not further limit "the paper product" of claim 34 since it does not refer to the paper product recited in claim 34. The recitation of claim 47 is not presented as a limitation of Applicant's claimed invention. Additionally, even though claim 47 does not further limit "the paper product" of claim 34, a piece of paper coated with a composition containing

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alginate (as evidenced to be well known by Habereeder et al.) can be used as a “paper towel”. The recitations “the paper product is wrapped around a cylindrical core” (claim 48) and “the metal modified nanoparticles are applied to the cylindrical core” (claim 49) are method limitations that have not been given patentable weight since the method of forming the article is not germane to the issue of patentability of the article itself.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh  
01/25/07

WBA

  
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1/26/07